

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

JERAMIE CARLSSON,

Plaintiff,

v.

BYRON CRAGG, et al.,

Defendants.

Case No. 3:14-cv-00091-MMD-VPC

ORDER ACCEPTING AND ADOPTING
REPORT AND RECOMMENDATION
OF MAGISTRATE JUDGE
VALERIE P. COOKE

Before this Court is the Report and Recommendation of the United States Magistrate Judge Valerie P. Cooke ("R&R"), relating to Defendants Byron Cragg and Ryan Connelly's Motion to Dismiss (dkt. no. 15). (Dkt. no. 36.) Plaintiff had until July 27, 2015, to object to the R&R. No objection was filed.

This Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where a party fails to object, however, the court is not required to conduct "any review at all . . . of any issue that is not the subject of an objection." *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Indeed, the Ninth Circuit has recognized that a district court is not required to review a magistrate judge's report and recommendation where no objections have been filed. See *United States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard of review employed by the district court when reviewing a report and recommendation to which no objections were made); see also *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1226 (D. Ariz. 2003) (reading the Ninth Circuit's decision in *Reyna-Tapia* as adopting the view that district courts are not required to review "any issue that is not the subject of an

1 objection.”). Thus, if there is no objection to a magistrate judge’s recommendation, then
2 the court may accept the recommendation without review. *See, e.g., Johnstone*, 263 F.
3 Supp. 2d at 1226 (accepting, without review, a magistrate judge’s recommendation to
4 which no objection was filed).

5 Nevertheless, this Court has conducted a *de novo* review and determines that the
6 R&R of the Magistrate Judge should be accepted and adopted in full.

7 It is therefore ordered that Defendants’ motion to dismiss (dkt. no. 15) is granted
8 in part and denied in part. Defendants’ argument for dismissal of Plaintiff’s Eighth
9 Amendment claim is rendered moot as Plaintiff cured the deficiency in his amended
10 complaint. Plaintiff’s official-capacity claims against Defendants are dismissed without
11 prejudice, with leave to amend. Plaintiff’s individual-capacity claims against all
12 defendants shall proceed.

13 If Plaintiff chooses to file an amended complaint he is advised that an amended
14 complaint supersedes the original complaint and, thus, the amended complaint must be
15 complete in itself. *See Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d
16 1542, 1546 (9th Cir. 1989) (holding that “[t]he fact that a party was named in the original
17 complaint is irrelevant; an amended pleading supersedes the original”); *see also Lacey*
18 *v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012) (holding that for claims dismissed
19 with prejudice, a plaintiff is not required to reallege such claims in a subsequent
20 amended complaint to preserve them for appeal). Plaintiff’s amended complaint must
21 contain all claims, defendants, and factual allegations that Plaintiff wishes to pursue in
22 this lawsuit. If Plaintiff chooses to file an amended complaint, he must do so within thirty
23 (30) days from the date of entry of this order. If Plaintiff chooses not to file an amended
24 complaint curing the stated deficiencies, this action will proceed on Plaintiff’s First
25 Amended Complaint and as limited by this Order.

26 DATED THIS 21st day of August 2015.

27 
28 MIRANDA M. DU
UNITED STATES DISTRICT JUDGE